



THE INTERIM

January 2012

A monthly newsletter of the Montana Legislative Branch

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Legislative Services Division
Room 110, State Capitol
PO Box 201706
Helena, MT 59620-1706
(406) 444-3064

The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at leg.mt.gov.

National Association Honors Legislative Audit Division Manager

The National Association of Professional Women VIP Division selected Vickie Rauser as a 2011-12 Professional Woman of the Year.

Based in Garden City, N.Y., NAPW is an exclusive network for professional women to interact, exchange ideas, educate, and empower, according to the association's website. The association claims 150,000 members across the United States.

Rauser, a certified public accountant, has worked at LAD for more than 30 years. She is a graduate of Montana State University and a member of the American Institute of Certified Public Accountants.

NAPW staff review their member profiles to select those for the Professional Woman of the Year designation. The designation process included questions concerning her career, hobbies, civic involvement, and work with charitable organizations, according to Rauser.

In her biography at napw.com, Rauser said she is passionate about fraternal organizations such as the Order of the Eastern Star, Daughters of the Nile, and the International Order of the Rainbow for Girls. She also lists her hobbies as reading, spending time with family and friends, and attending movies, concerts and plays.

CFHHS Committee Wrapping Up Study on Childhood Hunger

The Children, Families, Health, and Human Services Interim Committee will continue reviewing issues related to childhood hunger and to Medicaid at a Jan. 23 meeting.

The committee will discuss options for action on several topics related to the House Joint Resolution 8 study of childhood hunger. Committee members in November asked for additional information on the following suggestions made by stakeholders and committee members:

- ways to increase the number of schools taking part in the federal School Breakfast Program;
- ways to support efforts to put Montana farm products into schools;
- improving access to full-scale grocery stores for people in rural areas;
- the possibility of creating a clearinghouse for nutrition education programs offered in Montana;
- ways to use Supplemental Nutrition Assistance Program benefits at farmers' markets;
- ways to support "gleaning" programs that harvest unused produce or grains from fields or recover unsold items from grocery stores or restaurants;
- whether to restart the cannery at the Montana State Prison to can Montana foods for distribution to food banks around the state;
- whether to distribute to food banks some of the milk produced at the State Prison dairy;
- whether flexibility exists in the federal SNAP or Temporary Assistance for Needy Families programs to use some of the federal funds for other food-related programs;
- how programs at the Livingston Food Pantry might be replicated elsewhere; and
- the ongoing efforts to revise and clarify state laws and regulations related to food processing and food safety.

The committee is expected to decide in January whether to pursue legislation or any other action on those topics. Work on the HJR 8 study is scheduled to conclude in March.

The committee will continue to monitor Medicaid by learning about options for privatization and about ways to reduce errors in billing and eligibility determination. The committee will also hear about the effect that changes in Medicaid reimbursement rates have had on providers of Medicaid services.

The committee meets on Jan. 23 in Room 137 of the Capitol. The meeting time, agenda, and materials will be posted to the committee's website, www.leg.mt.gov/cfhhs, as they become available.

Redistricting Panel to Review Maps

The Districting and Apportionment Commission is meeting Friday, Feb. 17 in Room 102 of the Capitol. The commissioners will begin consideration of several draft maps of possible new legislative districts. The maps will include those prepared by staff at the request of the commission and any completed maps prepared by members of the public. The commission-

ers will also adopt a meeting schedule for 2012, including dates and times of public hearings around the state.

Draft maps, when available, will be posted on the commission's website at www.leg.mt.gov/districting.

Besides giving public comment at commission meetings, you may also contact the commission by email, mail, or fax. All correspondence will be copied and provided to each commissioner. It also becomes part of the commission's permanent public record. Send written comments to Districting and Apportionment Commission, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706; by email to districting@mt.gov; or by fax to 406-444-3036.

For more information visit the commission's website or contact commission staff Rachel Weiss at 406-444-5367 or rweiss@mt.gov.

Workers' Comp and Licensing Boards on Economic Affairs Agenda

The Economic Affairs Interim Committee will review workers' compensation and certain licensing boards Jan. 19-20 in Room 137 of the Capitol, beginning at 9 a.m. both days.

Two panel discussions will focus on workers' compensation. One panel will discuss ways to fund workers' compensation for volunteer firefighters, particularly those operating under a county cooperative program with the Department of Natural Resources and Conservation. DNRC requires work comp coverage under the program for fighting fires with DNRC-loaned equipment. Any county not providing coverage could face a lawsuit by a firefighter injured on the job.

The other panel will review the implementation of House Bill 334, which made major changes in Montana's workers' compensation laws. The panel will discuss implementation by self-funded work comp plans, including those covering state and municipal employees; Montana contractors; and big corporate plans, plus plans written by the private market. Previously the committee heard updates from the Montana State Fund and the Department of Labor and Industry.

A third panel will discuss worker safety and what is being done to improve Montana's high incidence rate in 2010 of 5 nonfatal accidents per 100,000 workers, compared to the national rate of 3.5. These discussions all will be Jan. 19.

Other agenda items include:

- a panel discussion on Jan. 20 regarding what constraints are feasible to keep boards from overreaching and the line between unlicensed practice and restraint of trade. The discussion is part of the HB 525 review of whether boards are necessary to protect public health and safety;

- a HB 525 review of the Board of Public Accountants (Jan. 19), the Board of Outfitters (Jan. 19), the Board of Optometry (Jan. 20), and the Board of Nursing (Jan. 20);
- reports on Jan. 20 regarding the Board of Dentistry and the Board of Funeral Service, two boards that the EAIC has not yet signed off on under HB 525 because of concerns raised during their original reviews;
- monitoring of the Employment Relations Division of the Department of Labor and Industry and the Montana Facility Finance Authority on Jan. 19;
- a HB 142 review of the Montana Noxious Weed Management Advisory Council, the Montana Noxious Weed Seed Free Forage Advisory Council, and the Organic Commodity Advisory Council on Jan. 20.

The public is welcome to attend, and public comment times are scheduled. The meeting also is available on the Internet and on TVMT. For more information see the committee website at leg.mt.gov/eaic or contact Pat Murdo at pmurdo@mt.gov or 406-444-3594.

Education & Local Government Committee Meets in January

The Education and Local Government Committee will meet Jan. 23 and 24 in Room 102 of the Capitol, beginning at 9 a.m. both days.

The committee will dedicate the Jan. 23 portion of the agenda to the local government and higher education topics on its work plan, including subdivision exemptions (lease or rent and family transfers), fees for emergency services, public safety communication, Montana university system tuition, the Legislature's and university system's Shared Policy Goals and Accountability Measures, and two-year education initiatives and programs. On Jan. 24, the committee will focus on K-12 education, including data system development in Montana and in other states and K-12 teacher training, recruitment, and retention.

For more information on ELG, check the committee website at <http://leg.mt.gov/elgic> or contact Leanne Kurtz, ELG staff, at lekurtz@mt.gov or 406-444-3593.

Energy Panel to Review Reorganization of Electric Cooperative

Members of Southern Montana Electric Generation and Transmission Cooperative will discuss the company's recent decision to seek bankruptcy protection during the Energy and Telecommunications Interim Committee meeting Jan. 13 in Room 172 of the Capitol.

Southern Montana's five rural electric cooperative board members — Beartooth, Fergus, Mid-Yellowstone, Tongue River, and Yellowstone Valley — have been invited to talk about their perspectives on the wholesale power cooperative and its future. Electric City Power, also a member of Southern Montana, will report on the bankruptcy. ETIC Chairman, Alan Olson, requested the board members to attend the January meeting and discuss potential effects on Montana customers.

Last October Southern Montana filed for bankruptcy protection. The company will continue to operate as it pays off its creditors. In late November a federal bankruptcy court appointed Lee A. Freeman Jr., a Livingston attorney, as trustee to oversee the cooperative's operations until it is reorganized under Chapter 11 or liquidated under Chapter 7 of the federal bankruptcy code. Freeman also has been invited to the January meeting to discuss his role in the reorganization.

The committee will wrap up its review of the statutes that establish the organization and operation of the Public Service Commission, including options for replacing the five-member elected commission with an appointed commission, terms of office, vacancies, qualifications, and use of districts. The committee will decide whether to revise the PSC structure or leave it alone.

The ETIC will hear from stakeholders on reforming Montana's underground facility damage prevention program, also known as "one-call" or "call before you dig". As pressure from the federal government to reform the program builds, ETIC members asked stakeholders to work toward consensus on draft legislation related to enforcement of the program.

Rounding out the agenda is a presentation by professor John Peters. Peters is conducting research at Montana State University-Bozeman under the Air Force Office of Scientific Research project. The project is looking at ways to optimize certain hydrogen production for alternative energy. Researchers are focusing on hydrogen production in algae and bacteria by studying the microbes found in Yellowstone National Park to better understand how they produce hydrogen.

The agenda and background information for the January meeting is available at <http://leg.mt.gov/etic>. For more information contact Sonja Nowakowski at snowakowski@mt.gov or at 406-444-3078.

Legislative Council Reviews Security Proposal, Appoints Subcommittees

The Legislative Council met Dec. 7. In the morning, council members participated in a revenue estimating process roundtable discussion. A summary of the meeting will be available soon, and the chairs and vice-chairs of the Revenue and

Transportation Committee, the Legislative Finance Committee, and the Legislative Council will meet in January to decide the next steps.

The council discussed the rules promulgated by the Supreme Court and their future publication in the Montana Codes Annotated. The council requested draft legislation to eliminate the requirement that the rules be published in the MCA. They directed the code commissioner to work with the Court and stakeholders on options. Todd Everts was appointed as code commissioner, returning the duties to the legal services director.

The council heard a proposal dealing with legislative security. Staff proposed adding security officers through a contract with the Helena Police Department. A subcommittee, consisting of Sens. Jim Peterson and Carol Williams and Reps. Chuck Hunter and Jesse O'Hara, will look at the proposal in more detail. The proposal is available on the council's website.

The council appointed Peterson and Sen. Mitch Tropila and Rep. Margie MacDonald and O'Hara to a rules subcommittee. The subcommittee will make recommendations on legislative rules to the next Legislature. The council is seeking suggestions or comments from all legislators on joint rules, House rules, or Senate rules, and suggestions for training or reference materials. Please contact one of the rules subcommittee members or Todd Everts with your ideas.

The council adopted a new policy that applies to interim committees taking testimony by phone. The full text of the new policy can be found under Public Participation Guidelines in "Rules, Procedures, and Guidelines for Interim Committees" on the council's website. In order to be fair to all persons wanting to testify before a committee, the council adopted the following:

Public comment may be taken in person or through written communication. Public comment may not be accepted over the phone. Written comments may be accepted at any time through electronic or regular correspondence and will be copied to all committee members and entered into the record.

The council will meet March 7 and 8 in Helena. The subcommittees may meet before then, but meetings have not yet been scheduled.

For more information and to view agendas, minutes, and meeting materials, please visit the Legislative Council's website at leg.mt.gov/legcouncil, or contact Susan Byorth Fox at 406-444-3066 or sfox@mt.gov.

Legislative Finance Committee

The Legislative Finance Committee met on Dec. 5 and 6 to review a revenue update, to begin the performance measurements under Senate Joint Resolution 26, to look at the funding of pension liabilities at the state and local level, and to hear the second of a series of school funding reports leading up to the school funding study that is required to be completed at least by the end of the 2015-16 interim.

Revenue Update

The following is an excerpt of the General Fund Revenue Update for the 2013 Biennium. The full report is available on the committee's website.

Figure 1 shows that the potential 2013 biennium revenue adjustment is \$137.8 million. This represents a 3.8% increase in the revenue estimates contained in House Joint Resolution 2. The Legislature budgeted for an ending fund balance of \$150.4 million by the end of the 2013 biennium.

2013 Biennium General Fund Revenue Estimates Anticipated Revenue Adjustments - In Millions					
Tax Source	FY 2012 HJ2 Estimate	% of Total	Adjustment FY 2012	Adjustment FY 2013	Adjustment 2013 Biennium
1 Individual Income Tax	\$809,322	45.3%	\$56,861	\$60,411	\$117,272
2 Property Tax	237,188	13.3%	No Chg.	No Chg.	No Chg.
3 Corporation License Tax	115,086	6.5%	15,079	16,777	31,856
4 Vehicle Fee/Tax	106,716	6.0%	(7,775)	(7,807)	(15,582)
5 Oil & Gas Production Tax	102,996	5.8%	5,329	19,917	25,245
6 Insurance Tax	57,372	3.2%	1,878	1,982	3,860
Remaining	<u>356,942</u>	20.0%	<u>(9,495)</u>	<u>(15,327)</u>	<u>(24,822)</u>
Totals	\$1,785,622		\$61,877	\$75,953	\$137,829
Interest & Income (Oil & Gas Bonus Payments)			\$17.4	\$6.4	\$23.800

Figure 2 shows the revised general fund balance sheet that incorporates the preliminary FY 2011 amounts and the anticipated revenue improvements shown in Figure 1. The revised projected balance of \$426.7 million includes the anticipated supplemental appropriations of \$29.6 million for public schools. The supplemental appropriation amount has been decreased from the post-session forecast because of the potential additional revenue collections from interest and income bonus payments.

Legislative Budget - General Fund Outlook Figures in Millions		
	2011 Biennium	2013 Biennium
Beginning Fund Balance	\$396,334	\$343,762
Revenue		
HJ2 Revenue Estimate	3,409,703	3,638,761
Anticipated Adjustments	-	137,829
Total Funds Available	\$3,806,037	\$4,120,353
Disbursements		
General Appropriations - HB2	3,273,726	3,249,690
Statutory Appropriations	340,721	379,702
Transfers	135,516	30,020
Other Appropriations	-	4,206
Supplementals	-	29,614
Feed Bill	-	12,478
Reversions	(285,936)	(12,069)
Total Disbursements	\$3,464,027	\$3,693,641
Fund Balance Adjustments	1,752	-
Ending Fund Balance	\$343,762	\$426,712

Performance Measurements

The committee adopted issue statements and measures for determining the effectiveness of several state government activities. The following were discussed:

- Medicaid Eligibility Expansion and Healthy Montana Kids Monitoring
- DPHHS Budget Status Report
- Medicaid Model Update
- Offices of Public Assistance and Economic Security Programs
- Montana Insurance Verification System
- Death Penalty
- Water Court Operations

The committee will receive an update on these projects at a future meeting. In subsequent meetings, information will be reviewed to determine if the measures for effectiveness are adequate, if milestones are being met, and if other issues have arisen that may require legislative attention.

All reports to the committee, including those mentioned above, can be found at <http://leg.mt.gov/css/fiscal/reports/2011-2012-interim-reports.asp#dec2011>. Contact LFD staff to answer any questions or concerns regarding the reports.

Revenue and Transportation Committee Works on 3 Studies

The Revenue and Transportation Interim Committee met Dec. 8-9 to work on three studies, monitor agency activities, and review the status of the state general fund (see p. 4 for coverage of the revenue update).

HJR 13 Study of Income Taxes

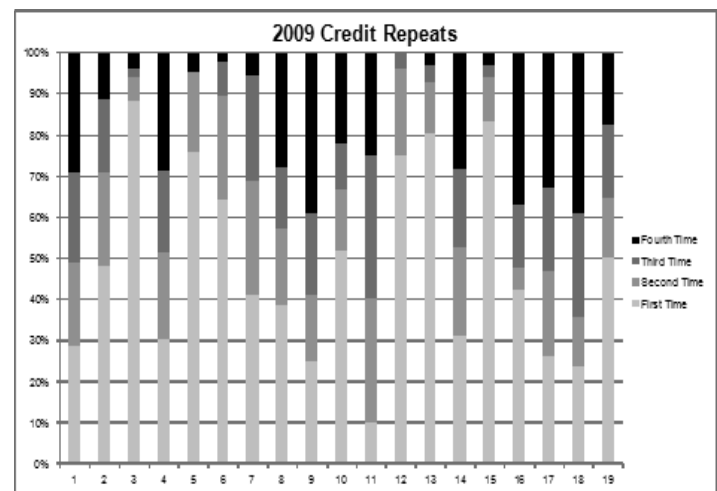
Joe Shevlin, with the Montana Society of CPAs, told the committee that Montana's individual income tax system (and the federal individual income tax system) needs a complete overhaul, but that the committee will not likely be the architect of the overhaul. He said that the political process hinders tax reform. He pointed to the failure of the so-called super committee to come up with a plan to reduce federal deficits as an example of how difficult it is to achieve reform within the political process.

He said that before the system can be revamped there must be general agreement of what the tax system should do: Should it raise revenue for governmental functions or should it promote social and economic policy?

Last September, Stephanie Morrison, Legislative Fiscal Division, presented an analysis of individual income tax credits. The committee requested information on repeat users of tax credits, credit use by income distribution, and the effective tax rate before and after tax credits. The committee also requested an analysis of the use of individual income tax deductions.

At the Dec. 9 meeting, Morrison summarized the follow-up report. The analysis showed that there were 69,575 resident taxpayers with incomes greater than \$0 who claimed at least \$1 of tax credit in 2009—the total amount of credits claimed by these taxpayers was \$62.5 million.

The graph below shows the percentage of 2009 users of each credit who were multi-year users of the credit. For example, 88% of taxpayers who claimed the alternative fuel credit were first-time users of the credit. Second-time users accounted for about 6% of claimants, third-time users were 2% of claimants. Four percent of taxpayers who claimed the credit in 2009 had claimed it every year for which there is identifying information (2006-2009).



Credit Key: 1 Capital gains credit—full year resident; 2 Capital gains credit—nonresidents; 3 Alternative fuel credit; 4 College contribution credit; 5 Elderly care credit; 6 Energy conservation credit; 7 Insurance for uninsured Montanans; 8 Other states' income tax credit; 9 Qualified endowment credit; 10 Recycling credit; 11 Rural physicians credit (terminated); 12 Adoption credit; 13 Alternative energy credit; 14 Contractor's gross receipts credit; 15 Geothermal credit; 16 Research activities credit; 17 Elderly homeowner & renter credit; 18 Insure Montana small business health insurance credit; 19 Other credits (fewer than 10 claimants)

Credits reduced the average effective tax rate by 0.67% to 3.95% depending on income decile (not including the lowest decile of income).

In 2009, 226,612 full-year resident taxpayers had total itemized deductions of \$3.97 billion. If this amount is multiplied by the average effective tax rate of 3.9%, the approximate

effect on tax collections is about \$155 million. For purposes of comparison, if each of those taxpayers had taken the standard deduction (\$3,950 or \$7,900 depending on filing status) instead of itemizing, the total amount of deductions would have been \$1.16 billion, or less than a third of the itemized deductions.

SJR 17 Study of Centrally Assessed Property

Jeff Martin, committee staff, summarized a draft report on how five western states (Arizona, Idaho, New Mexico, Oregon, and Utah) assess public utilities, telecommunications, railroads and airlines for property tax purposes. The survey of the five states showed a variety of methods in valuing centrally assessed property, with methods sometimes varying by type of property.

Arizona and New Mexico each have separate statutory procedures for valuing property operating as a unit within the state.

Idaho, Oregon, and Utah use the unit value method for valuing property operating in more than one county of the state on in more than one state. Idaho rules prohibit using direct capitalization of income, while the rules in Utah discourage direct capitalization and the stock and debt approach because these methods “typically capture intangible property at higher levels than other methods.”

Idaho and Utah exempt intangible personal property from taxation. Oregon also exempts intangible personal property except for intangible personal property of a taxpayer subject to unit valuation.

In 1999, the Montana Legislature adopted a statutory method for valuing railroad property by formula (House Bill 669). The legislation was enacted to resolve long-standing valuation disputes between Burlington Northern Railroad and the Department of Revenue.

Judy Cummings, tax director of BNSF, explained how the valuation formula works. The Department of Revenue determines the current year value of a railroad system by multiplying the base value of the railroad by the value change factor. The base value is the system value of the railroad in the preceding tax year, and the value change factor is the sum of the income change factor, the gross profit margin change factor, and the property change factor, with each factor weighted by a specified percentage.

Dan Bucks, director of the Department of Revenue, presented estimates of what property taxes would be by class of property if the recent sales price of BNSF were used to value the railroad. He also provided estimates of the reduction in taxes if all centrally assessed property were valued by a formula method.

During public comment, Bob Strong, tax director at AT&T, summarized a report prepared by Richard Smith, an attorney, that analyzed State Tax Appeal Board decisions and court decisions in Montana on the unit valuation of property. The decisions were discussed by Bucks last September. Among other things, the report discusses how direct capitalization under the income approach and the stock and debt approach affect the exemption of intangible personal property in Montana.

SJR 23 Study of Tax Exemptions for Nonprofits

Megan Moore, committee staff, presented data on hospital charity care and bad debt that showed higher levels of charity care from 2009 to 2010. The analysis also indicated that residents of the county in which the hospital is located benefit from at least 50 percent (often more) of the charity care and bad debt write-offs.

Moore summarized state laws in Minnesota and Pennsylvania on the eligibility for charitable tax exemptions using “multi-factor tests” originally established by the respective state’s Supreme Court. Moore also discussed provisions in Maine and Wisconsin that eliminated a property tax exemption for leased real property and excluded health clubs and doctor’s offices from the hospital property tax exemption, respectively.

The Department of Revenue compared changes in the value of exempt property with the market value of taxed property in the seven most populous counties. Department staff pointed out that the valuation figures of exempt property are not accurate because exempt property is not reappraised and values are updated using a computer model that does not necessarily account for the market value of the property or improvements. Using the data provided by the DOR, Moore presented figures on the amount of tax shifting that occurs from the granting of property tax exemptions for nonprofits.

Moore reported on whether nonprofits that own agricultural or forest land for preserving historical, archeological, or environmental purposes pay taxes on the property. She said that these organizations paid property taxes on their agricultural and forest property in 2011 and that there was no tax shifting.

Committee Requests Penalty and Interest Bill Draft

Last September, the committee asked staff to meet with representatives of the Montana Society of CPAs, the Department of Revenue, the Montana Taxpayers Association, the Montana Budget and Policy Center, and Sen. Joe Balyeat to see if there was agreement to combine Senate Bill 199 and SB 411 from last session as a committee bill. Both bills revised the uniform interest and penalty provisions under 15-1-216, MCA. SB 199 would have reduced the late penalty payment and the underpayment rate for individual income taxes. SB 411 would have imposed substantial penalties on other taxes

for failure to file a return, for underpayment of the tax due, and for fraudulent or frivolous returns. The group met Nov. 9 and recommended combining the two bills. The committee requested a bill draft to do so.

Agency Reports

Tim Reardon, director of the Montana Department of Transportation, told the committee that District Court Judge Ray Dayton modified a preliminary injunction against the department and Imperial Oil/Exxon Mobil stopping the shipment of heavy load oilfield equipment through Montana on two-lane roads to the Kearl Oil Sands in Alberta, Canada. The modification allows MDT to review and permit the shipment of loads on Highway 12 from Lewiston, Idaho, to Missoula. The modification was based on lighter loads and using the interstate as an alternative route from Missoula. So far, no shipments have been made on this route. However, 80 loads have moved from Lewiston and from Pasco, Washington, over Lookout Pass on I-90 to Butte and on I-15 north. Reardon said a hearing on a permanent injunction on the original route is scheduled for Jan. 6, with a trial likely next April.

Reardon also reported on the enforcement of diesel fuel laws in Montana.

Dan Bucks told the committee that the Department of Revenue has revised the 2011 tax year return by including a checkbox that the taxpayer may check giving the department permission to discuss the tax return with the taxpayer's spouse and also with a designated third party, if the taxpayer so chooses.

Bucks also discussed a District Court's denial of class certification in *Lucas v. Department of Revenue*, a case dealing with the phase in of agricultural land values from reappraisal.

The committee is meeting Feb. 16-17. For more information, contact Jeff Martin at 406-444-3595 or jmartin@mt.gov, or visit the committee's website at leg.mt.gov/rtic

Efficiency in Government Committee Meets in January

The Select Committee on Efficiency in Government is meeting Jan. 9-10 in Room 102 of the Capitol. The Technology Subcommittee is scheduled to meet at 9 a.m. Jan. 9 followed by the Health Care/Medicaid Subcommittee at 1 p.m. Both subcommittees are meeting in Room 102. Details about the subcommittees' and full committee's meetings are detailed in the meeting agendas posted on the committee's website at <http://leg.mt.gov/sceg>.

For more information, contact Dave Bohyer, lead staff for the SCEG, at dbohyer@mt.gov or 406-444-3592.

State Admin Committee Studies State Retirement Systems

The State Administration and Veterans' Affairs Interim Committee will meet Jan. 27 in Room 137 of the Capitol building. The agenda for the meeting is not final, but the committee will start on the work plan adopted in October. The agenda will likely include an update from the Montana Department of Administration and a presentation from one or more advisory councils as part of the House Bill 142 review of advisory councils.

The committee monitors the state employee retirement systems, and the committee has chosen to study the unfunded actuarial liabilities of the retirement systems and the budgeting process.

Section 5-5-228(2)(b), MCA, directs the committee to "establish principles of sound fiscal and public policy as guidelines" in order to evaluate proposed changes to the state's retirement systems. The committee will discuss the principles and guidelines adopted by previous SAVA committees and review principles used by other states.

Other retirement-related topics will include an update on the Teachers' Retirement System's outreach efforts, an overview of the TRS annual report, a discussion about the legality of changing benefits for current employees and retirees, and an update by Amy Carlson, legislative fiscal analyst, on the Legislative Finance Committee's work on pension issues and a briefing on how retirement system liabilities are handled in the state budget.

The committee will also begin gathering information on two areas the committee voted to study: increasing the commissioner of political practices' authority concerning anonymous election materials and combining school board, municipal, and primary elections.

For more information visit www.leg.mt.gov/sava or contact Megan Moore, committee staff, at 406-444-4496 or mmoore@mt.gov.

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Should States Prohibit the Use of Mobile Electronic Devices by Drivers?

“A man’s got to know his limitations.” Magnum Force

By Jeff Martin

Legislative Research Analyst

Federal Agency Recommends Ban on Electronic Devices for Drivers

Several years ago my family signed up with a mobile communications provider, but I seldom used my cell phone, so when the contract was up, I dropped out and managed just fine. But a couple of years ago I got a pay-by-the-minute cell phone, with double minutes for life (of the phone, not mine), primarily for emergencies. I don’t make many calls, but I occasionally send text messages to my sons. For a previous Back Page article I sent a text message to my son in Massachusetts asking whether the state still has Puritan tendencies.

Because I’m an infrequent cell phone user, and never use it while driving,¹ I regarded with indifference the federal National Transportation Safety Board’s recent recommendation that calls for the 50 states and the District of Columbia to ban the nonemergency use of portable electronic devices for all drivers.

The recommendation came after the board had completed an investigation of a 2010 crash on Interstate 44 in Missouri, in which the driver of a pickup truck, while texting, rear-ended a truck-tractor that had slowed down in a construction area. The pickup was then hit by a school bus, which in turn was hit by a second school bus. Two people died in the accident and 37 people were injured. According to the board’s investigation, the driver of the pickup sent and received 11 text messages in the 11 minutes before the accident.

The study concluded that there were several contributing factors in the accident, including sleep-loss fatigue of the pickup driver and the actions of the two school bus drivers. The first bus driver diverted his attention to a motorcoach parked on the shoulder and the second driver was following too closely.

In a press release issued Dec. 13, 2011, announcing the recommendation, the board cited other incidents involving the use of electronic devices in several modes of transportation:

- In 2002, a novice driver, distracted by a conversation on her cell phone, veered off the roadway in Largo, Maryland, crossed the median, flipped the car over, and killed five people. [This was the first investigation conducted by the board on distracted driving involving a wireless electronic device.]

- In 2004, an experienced motorcoach driver, distracted on his hands-free cell phone, failed to move to the center lane and struck the underside of an arched stone bridge on the George Washington Parkway in Alexandria, Virginia. Eleven of the 27 high school students were injured.
- In the 2008 collision of a commuter train with a freight train in Chatsworth, California, the commuter train engineer, who had a history of using his cell phone for personal communications while on duty, ran a red signal while texting. That train collided head on with a freight train - killing 25 and injuring dozens.
- In 2009, two airline pilots were out of radio communication with air traffic control for more than an hour because they were distracted by their personal laptops. They overflew their destination by more than 100 miles, only realizing their error when a flight attendant inquired about preparing for arrival.
- In Philadelphia in 2010, a barge being towed by a tugboat ran over an amphibious “duck” boat in the Delaware River, killing two Hungarian tourists. The tugboat mate failed to maintain a proper lookout due to repeated use of a cell-phone and laptop computer.
- In 2010, near Munfordville, Kentucky, a truck-tractor in combination with a 53-foot-long trailer, left its lane, crossed the median and collided with a 15-passenger van. The truck driver failed to maintain control of his vehicle because he was distracted by use of his cell-phone. The accident resulted in 11 fatalities.

Since making the recommendation, the NTSB has updated its homepage (www.nts.gov) with a reader board that asks “are you guilty . . . of driving while distracted?” and says you probably are if “you’ve spent much time behind the wheel”. The message reports that 3092 people were killed last year by distracted driving and that a driver is 163 times more likely to have an accident using an electronic device while driving. I don’t think many people are likely to cruise to the website, and I am not sure the format is an effective way to get the word out on what the NTSB sees as the dangers of distracted driving — it takes awhile for the message to scroll though from beginning to end. But it shows the agency is serious about its recommendation.

¹ OK, once when I was getting directions to a tennis court in another city.

State Prohibitions on Electronic Devices

The National Conference of State Legislatures has compiled, in conjunction with the American Automobile Association, the Insurance Institute for Highway Safety, and the Governor's Highway Safety Association, a summary of state distracted driving laws (www.ncsl.org/?tabid=17057). So far, 35 states prohibit texting for all drivers. Nevada's ban on hand-held cell phones and texting for all drivers went into effect Jan. 1.

The number of states that ban the use of cell phones or other electronic devices while driving has increased substantially since 2005. In that year, Connecticut, the District of Columbia, New Jersey, and New York prohibited drivers from using hand-held cell phones, while Illinois, Massachusetts, New Mexico, Ohio, and Pennsylvania allowed local jurisdictions to determine whether to prohibit cell phone use while driving. Other states prohibited bus drivers and teenagers from using cell phones or other mobile electronic devices behind the wheel.

Since then, many more states have imposed a variety of bans on the use of electronic devices.

Texting while driving is a primary offense in 32 states, meaning that law enforcement officers can stop a motor vehicle for that violation. Texting is a secondary offense in Iowa, Nebraska, and Virginia, meaning that a driver has to be stopped for some other traffic violation before the driver can be ticketed for texting. In Utah, texting is a primary offense, but if a driver is pulled over for a traffic violation, other than speeding, and is caught gabbing on the phone without a hands-free device, the gabbing costs extra.

Nine states (California, Connecticut, Delaware, Maryland, Nevada, New Jersey, New York, Oregon, and Washington) and the District of Columbia, make the use of hand-held cell phones a primary offense.

Michigan has joined the five states allowing a local jurisdiction to prohibit the use of cell phones while driving within its jurisdiction. Except for New Mexico and Ohio, the local option states have made texting while driving illegal. In Illinois, hand-held cell phones may not be used in highway construction areas or in school zones.

Thirty states and the District of Columbia prohibit the use of any cell phone, hands-free or no, by teenagers. The prohibitions vary by age of the driver or class of license. For example, teenage drivers in Nebraska and West Virginia who are under 18 years of age and hold a learner's permit or an

intermediate license may not use any cell phone while driving. In Alabama, teenagers under 18 years of age and who have held an intermediate license for less than six months may not use a cell phone while driving. Young drivers in Delaware who hold a learner's permit or intermediate license may not use cell phones while driving.

Drivers younger than 18 years in 12 states (Arkansas, California, Colorado, Georgia, Indiana, Kentucky, North Carolina, North Dakota, Oregon, Rhode Island, Texas, and Virginia), regardless of license held, are prohibited from using cell phones while driving.

Nineteen states prohibit school bus drivers from using a cell phone while driving. California, Massachusetts, Oklahoma, and Texas extend the ban to public transportation drivers.

Don't Get Caught in Alaska

The fines for electronic device violations vary among the states. The most severe penalty appears to be in Alaska, where a person found guilty of class A misdemeanor violation of texting (or watching TV in the car) is subject to a \$10,000 fine and a year in jail. The stated fines and jail time go up if the driver injures or kills someone while engaged in electronic distracted driving.² A source, speaking on condition of anonymity, told me the actual fines (and jail time, if any), imposed for the class A misdemeanor for distracted driving are nowhere near the stated amount.

In the other states, fines range from a low of \$20 to \$50 in California to \$500 in Louisiana (double that amount if the driver is involved in a traffic accident). Some states impose larger fines on subsequent offenses, and in some states a conviction results in points being assessed against the person's driver's license.

In California, the actual cost is much higher than the nominal fines, depending on the imposition of other penalties and court costs. Gov. Jerry Brown recently vetoed legislation that would have increased the nominal fines to \$50 or \$100 because of the effect on people of "ordinary means".

Technology Can Deal with Part of the Problem

Teenagers are more likely to text than any other age group. In the Back Page article of the August 2011 issue of *The Interim*, Sonja Nowakowski reported that teenagers 13 to 17 years of age sent an average of 1,742 text messages a month during the period Jan. 1, 2006, to June 30, 2008. That number is more than double the amount sent by the next most frequent texters (18 to 24 years of age).

² Apparently there was some confusion over what the ban applied to when the legislation was first enacted. Some users, or whatever the term is for people who post random messages on the Internet, thought a violation of the ban was a capital offense.

For parents worried about their teenage children texting while driving, there are applications available for smartphones that prevent texting in a moving vehicle. The application can also monitor the position and speed of a car. The application allows a passenger to text while the car is moving.

Applications are also available that allow texting or checking email by voice through Bluetooth. The rationale for such devices is that if a person is going use a cell phone or text behind the wheel, at least make it safer.

Montana Proposals to Prohibit Use of Electronic Devices

Montana does not prohibit the use of electronic devices while driving. In 2009, then-Rep. Bob Lake introduced House Bill 49 that would have prohibited the use of cell phones or devices used to send text messages on a public highway within a first- or second-class city or in a school zone. Depending on the number of convictions, the fine for a violation would range from \$10 to \$500. The fiscal note stated that in 143 crashes reported in Montana in 2007, the use of a cell phone was listed as a contributing factor.

Sen. Christine Kaufmann also introduced legislation in 2009 (Senate Bill 278) that would have prohibited the use of hand-held cell phones or the use of a mobile device for texting while driving. The prohibition would have been a secondary offense to a moving violation and subject to a \$100 fine. Both bills failed.

Kaufmann and Sen. Jeff Essmann introduced SB 251 in 2011 that would have prohibited using a hand-held cell phone or using a mobile electronic device for texting while driving. The fiscal note stated that the Montana Highway Patrol investigated 173 crashes in 2010 in which distracted driving was the main contributing factor. Not all of those crashes would have involved the use of a cell phone. The Senate Highways and Transportation Committee amended the bill to prohibit texting while driving as a secondary offense. The bill failed to pass on second reading.

Helena recently banned the use of cell phones while driving, except for hands-free devices. Billings, Bozeman, Missoula, and Whitefish have similar bans. Some cities extend the ban to cyclists and others.

Which Study to Believe?

Studies on the use of cell phones or other electronic devices while driving conclude that the use increases the likelihood of being in an accident significantly. One study concluded that the use of a cell phone is similar to driving with a blood alcohol content of 0.08 (University of Utah, Department of Psychology, 2003), and another that using a hands-free device is not much safer than a hand-held device. (Yoko Ishigami, "Is a hands-free phone safer than a hand-held phone?")

A new study published in the January 2012 issue of the journal of Epidemiology (I learned of this study on a really, really early morning radio talk show) examined the possible bias in a 1997 Canadian study and a 2005 Australian study on the risk of crashing while using a cell phone. The study, conducted by Richard Young, professor of research at Wayne State's Department of Psychiatry and Behavioral Neurosciences, concluded that the "crash risk for cellphone conversation while driving is one-fourth of what was claimed in previous studies, or near that of normal baseline driving."

Young said that "texting, emailing, manual dialing and so forth — not conversation — are what increase the risk of crashes while driving." (See ScienceDaily, "Early Research on Cellphone Conversations Likely Overestimated Crash Risk, Study Suggests", December 14, 2011, at <http://www.sciencedaily.com/releases/2011/12/111214151144.htm>. This webpage includes links to summaries of a few other cell phone studies.)

I never intended in this article to do a literature review of studies evaluating the risk of using mobile electronic devices while driving, but mention the results of a few in passing because dueling conclusions can make it difficult for policy makers to judge the severity of a problem or to formulate an appropriate response to the problem.

States provide a variety of restrictions on the use of motor vehicles and impose penalties for traffic and other violations. I have observed enough bone-headed maneuvers by drivers talking on a cell phone to make me think some prohibition on the use of cell phones while driving would be a good thing. But is the real-world evidence sufficient for governments to get involved in the communication habits of drivers? Many states think so, particularly for texting and for younger drivers.

That is the dilemma for policy makers: whether to limit the use of mobile electronic devices behind the wheel and to what extent.

Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 New Year's Day	2 New Year's Day (Observed)	3	4	5	6	7
8	9 Select Committee on Efficiency in Government, Technology Subcommittee, Rm 102, 9 a.m. Select Committee on Efficiency in Government, Health Care/Medicaid Subcommittee, Rm 102, 1 p.m.	10 Select Committee on Efficiency in Government, Rm 102, time TBA Water Policy Committee, Rm 172, 9 a.m.	11 Water Policy Committee, Rm 172, 8 a.m. Environmental Quality Council, Rm 172, 1 p.m.	12 Environmental Quality Council, Rm 172, 8 a.m.	13 Energy & Telecommunications Committee, Rm 172, 9 a.m. State Tribal Relations Committee, room & time TBA	14
15	16 Martin Luther King, Jr., Day	17	18	19 Economic Affairs Committee, Rm. 137, 9 a.m.	20 Economic Affairs Committee, Rm. 137, 9 a.m.	21
22	23 Children & Families Committee, Rm. 137, time TBA Education & Local Government Committee, Rm 102, 9 a.m.	24 Education & Local Government Committee, Rm 102, 9 a.m.	25	26	27 State Administration & Veterans' Affairs Committee, Rm 137, time TBA	28
29	30	31				

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9 Computer System Planning Council, Rm 102, 1:30 p.m.	10	11
12	13	14	15	16 Revenue & Transportation Committee, Rm 137, time TBA	17 Revenue & Transportation Committee, Rm 137 time TBA Districting & Apportionment Commission, Rm 102, time TBA	18
19	20 Lincoln's & Washington's Birthday	21	22	23 Law & Justice Committee, room & time TBA	24 Law & Justice Committee, room & time TBA	25
26	27	28				

Legislative Services Division
PO Box 201706
Helena MT 59620-1706